

REMARKS

By this amendment, claims 1-25 are pending, in which no claims are canceled, withdrawn from consideration, currently amended, or newly presented.

The Office Action mailed March 18, 2009 rejected claims 1-22 and 24 as obvious under 35 U.S.C. § 103 based on *Duske, Jr. et al.* (US 6,992,991) in view of *Hanson et al.* (US 2003/0120811), and claims 23 and 25 as obvious under 35 U.S.C. § 103 based on *Duske, Jr. et al.* (US 6,992,991) and *Hanson et al.* (US 2003/0120811) in view of *Klein* (US 6,178,523).

The rejection of claims 1-22 and 24 under 35 U.S.C. § 103 is respectfully traversed.

Applicants note, with appreciation, the Examiner's acknowledgement, after reviewing Applicants' Appeal Brief of December 8, 2008, that *Duske, Jr. et al.* fails to disclose the storage of two separate information elements of different levels in two separate data structures, as claimed.

The latest Office Action now relies on *Hanson et al.* for a teaching of storing a first information element in a first data structure in a telemetry device when it is determined that the first information element includes a first priority level indication, and for teaching the storing of a second information element in a second data structure in the telemetry device when it is determined that the second information element includes a second priority level indication, referring, in particular, to paragraph [0089], where messages are stored in corresponding queues according to priority level, and to paragraph [0175] and Fig. 9, where priorities are weighted and handled according to their weighting.

Hanson et al. is not concerned with the same type of priority and data structures, as those claimed. In *Hanson et al.*, the concern is to maintain a connection between a Mobile End System and a Mobility Management Server. If a Mobile End System becomes unreachable,

suspends, or changes network address in *Hanson et al.* (e.g., due to roaming from one network interconnect to another), the Mobility Management Server maintains the connection to the associated peer task, allowing the Mobile End System to maintain a continuous connection even though it may temporarily lose contact with its network medium. The Mobility Management Server (MMS) coupled to a mobile interconnect maintains the state of each of any number of Mobile End Systems (MES) and handles the complex session management required to maintain persistent connections to the network and to peer **application** processes. Thus, *Hanson et al.* is concerned with **maintaining connections to applications** to which the mobile devices may be connected. Unlike the instant claimed subject matter, *Hanson et al.* is not directed to the “transmission of **messages**” or to the determination of whether first and second information elements include a first and second priority level indication, respectively. Thus, the “priority” disclosed at paragraphs [0089] and [0175] of *Hanson et al.*, cited in the Office Action, relate to “association priority” or “application priority within an association,” but not to the priority of first and second information elements, as claimed. In paragraph [0089] of *Hanson et al.*, priority is configured for a user and the machine that a user is logged in on. At paragraph [0175], priority queues are assigned a weight factor, which is a configuration parameter that is returned by the configuration manager 228 when a Mobile End System 104 to Mobility Management Server 102 is created. Thus, contrary to the assertion in the Office Action, the priority levels in *Hanson et al.* are not related to first and second information elements, wherein a first information element is stored in a first data structure in a telemetry device when it is determined that the first information element includes a first priority level indication, and a second information element is stored in a second data structure in the telemetry device when it is determined that the second information element includes a second priority level indication.

Accordingly, since neither of the applied references discloses the claimed feature of storing a first information element in a first data structure in a telemetry device when it is determined that the first information element includes a first priority level indication, and for teaching the storing of a second information element in a second data structure in the telemetry device when it is determined that the second information element includes a second priority level indication, no *prima facie* case of obviousness has been established, within the meaning of 35 U.S.C. § 103.

Moreover, even if *Hanson et al.* could be considered to disclose storing a first information element in a first data structure in a telemetry device when it is determined that the first information element includes a first priority level indication, and for teaching the storing of a second information element in a second data structure in the telemetry device when it is determined that the second information element includes a second priority level indication, which it cannot, the skilled artisan would not have sought to combine *Hanson et al.* with *Duske, Jr. et al.*

Contrary to the assertion in the Office Action that *Hanson et al.* and *Duske, Jr. et al.* “are analogous art because they are from the same field of endeavor of providing a user with mobile communication” (e.g., Office Action, page 6), these references are concerned with two, entirely separate problems. Whereas *Duske, Jr. et al.* is concerned with transmitting messages between mobile terminals and a central control center, wherein message display forms having predetermined display formats act as templates for generating user messages, *Hanson et al.* is directed to maintaining a connection between a Mobile End System and a Mobility Management Server, such that if a Mobile End System becomes unreachable, suspends, or changes network address (e.g., due to roaming from one network interconnect to another), the Mobility

Management Server maintains the connection to the associated peer task, allowing the Mobile End System to maintain a continuous connection even though it may temporarily lose contact with its network medium.

Considering the disparate natures of these two references, while they may both be involved in mobile terminal communications, in general, the references do not constitute analogous art. The test for analogous art outside an inventor's field of endeavor is whether the art pertains to the particular problem confronting the inventor. *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). The inventor's field of endeavor here is the prioritization of transmission of messages from a telemetry device. Clearly, the disclosure of *Hanson et al.* is outside this field of endeavor, so the question is whether *Hanson et al.* pertains to the particular problem facing the inventor. That particular problem concerns prioritizing information to be sent from vehicles in a fleet and asset management system to ensure timely acquisition of location information, while ensuring that urgent information is communicated from the vehicle prioritized over other information that is less urgent. It is clear that *Hanson et al.* is not concerned with this problem of ensuring timely acquisition of **location information**, while ensuring access to urgent information. Therefore, since *Hanson et al.* does not pertain to the particular problem confronting the inventor and is outside the inventor's field of endeavor, *Hanson et al.* does not constitute analogous art and is not combinable with *Duske, Jr. et al.*, within the meaning of 35 U.S.C. § 103.

Furthermore, even if *Hanson et al.* could be combined with *Duske, Jr. et al.*, which it cannot, the instant claimed subject matter would not result.

In *Duske, Jr. et al.*, "message proforma" is a template that defines the contents of a message to be transmitted over a network, as well as the processing required for, or by, the

message. The “priority,” at which messages using this message proforma should be sent, is an attribute of the proforma object. The cited portion of col. 28 relates to message logs:

The software requirements in this section relate to the Message Log object. A message log in this context is an object that contains a list of message objects. The software will maintain five message logs:
Incoming Message Log (IML)
Outgoing Message Log (OML)
Network Message Log (NML)
Saved Message Log (SML)
Data Message Log (DML)

As is clear from these portions of *Duske, Jr. et al.*, message logs are maintained and templates defining the contents of a message have, as one attribute, a predetermined priority at which messages using that template should be sent. *Duske, Jr. et al.* fails to disclose the storage of two separate information elements in two separate data structures and, more importantly, storing these elements in response to a specified condition, as now acknowledged by the Examiner. *Duske, Jr. et al.* specifies no such condition of first and second information elements including, respectively, a “first priority level indication” and a “second priority level indication” prior to storing these information elements. The template, or message proforma, in *Duske, Jr. et al.* requires a message in this format to have a priority at which a message is sent, but the **determination that a message**, or information element, **includes this priority is not a precondition for storing the message**, or information element, in a first or second data structure, as required by the instant claims.

Hanson et al., also, does not disclose that a determination that a message, or information element, includes a priority level indication is a precondition for storing the message, or information element, in a first or second data structure. Thus, the combination of *Duske, Jr. et al.* and *Hanson et al.* does not result in the **determination that a message**, or information

element, **includes a priority level indication is a precondition for storing the message**, or information element, in a first or second data structure.

Moreover, even assuming all the Examiner alleges about the references to be accurate, and, respectfully, for the reasons above, Applicants do not agree that this is the case, the combination of *Duske, Jr. et al.* and *Hanson et al.* would result, at best, only in a plurality of queues having varying priorities based on assigned configuration parameters regarding associations between a Mobile End System and a Mobile Management Server, with such queues having no connection, or relevance, to the message logs maintained and templates defining the contents of a message of *Duske, Jr. et al.* The priority queues of *Hanson et al.* have no connection with predetermined priorities at which messages using a template should be sent, as disclosed in *Duske, Jr. et al.*

The forced modification of *Duske, Jr. et al.* by adding a plurality of priority queues in an attempt to construct a plurality of data structures, wherein a first information element including a first priority level indication is stored in a first data structure and a second information element including a second priority level indication is stored in a second data structure could only be suggested by a resort to impermissible hindsight, using Applicants' claims as a blueprint. This is not permissible within the meaning of 35 U.S.C. § 103.

Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 1-22 and 24 under 35 U.S.C. § 103.

With regard to the rejection of claims 23 and 25, since *Klein*, offered for the alleged teaching of how power is supplied to a telemetry device when an external power source fails, does not provide for the deficiencies of *Duske, Jr. et al.* and *Hanson et al.*, explained above, the subject matter of claims 23 and 25 is not obvious under 35 U.S.C. § 103.

Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 23 and 25 under 35 U.S.C. § 103.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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